Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	:	
	:	
Implementation of Sections of	:	
the Cable Television Consumer	:	
Protection and Competition	:	
Act of 1992: Rate Regulation	:	**MM Docket No. 92-266**
	:	
Implementation of Sections of	:	
the Cable Television Consumer	:	
Protection and Competition	:	
Act of 1992: Rate Regulation	:	**MM Docket No. 93-215**

OPPOSITION OF USA NETWORKS
TO PETITION FOR RECONSIDERATION
OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS

The National Association of Telecommunications Officers and Advisors ("NATOA") seeks reconsideration of the Commission's order which revised the going-forward cable rate rules in order to provide cable operators with increased incentives to add new program services and to expand their facilities in ways that afford opportunities for new and fledgling cable television networks to reach viewers.[1/] NATOA's Petition is based upon assertions that new rules are "contrary to the public interest" and, therefore, unlawful. USA Networks maintains that the NATOA arguments are utterly without merit. Its petition for reconsideration should be denied.

1/ Sixth Order on Reconsideration in MM Docket No. 92-266 and MM Docket No. 93-215, released Nov. 18, 1994 ("Sixth Order").

NATOA's claim that the new going-forward rules should be repealed entirely ignores the conditions in the marketplace that led the Commission to make those revisions. The fact is that the old going-forward rules, which NATOA asks the Commission to reinstate, were not working. From September 1993 until the announcement of the Sixth Order, there was a virtual "freeze" by cable operators on the addition of new and fledgling programming services to their offerings to subscribers. The cautious adjustments the Commission had made to its going-forward methodology in March of 1994,[2/] however well intentioned, had failed to stimulate increased choice for cable consumers. Further changes to the going-forward rules were plainly necessary to remove the regulatory barriers that were in the way of the launch and successful expansion of new cable programming services. Sixth Order at ¶ 22.

NATOA also ignores the policy objectives that support the Commission's response to these deplorable conditions--the decision to adopt the 20 cent markup rule for new services added to the cable programming service tier and to create a new product tier (NPT). Congress has expressly directed the Commission to "promote the availability to the public of a diversity of views and information" through cable television and to "rely on the marketplace, to the maximum extent feasible", to achieve that result. See 1992 Cable Act, § 2(b), 106 Stat. at 1462. Although it is far from clear that the new markup rules and NPT will achieve the same measure of diversity that would be realized in an unregulated environment, it is unarguable that the new rules represent a step in the

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2/ Second Order on Reconsideration, MM Docket 92-266 (March 30, 1994).

direction of these legislative directives. Cable operators are beginning to respond to the incentives afforded them under the new going-forward rules. As a result, cable subscribers are, increasingly, afforded the opportunity to receive and to view new and fledgling services like USA Networks' Sci-Fi Channel.

NATOA does not dispute the fact that the revised going-forward rules are explicitly designed to promote diversity and are beginning to show signs of improved realization of that goal. In the circumstances, its claim that the rules should be rescinded can only be understood as advancing either the proposition that diversity is irrelevant, or that there is no cost to cable operators and no increased economic value to subscribers from the addition of new services to cable offerings. The first of these arguments is contradicted by the language and legislative history of the 1992 Cable Act; the second is plainly false. NATOA's claim that the going-forward rules adopted by the Commission in the Sixth Order are contrary to the public interest is without factual or policy foundation.

NATOA's arguments that the rules are beyond the Commission's power (NATOA Petition at 4, 6) equally fails. The Act does not prescribe any one method of rate regulation. It permits the Commission to allow subscriber rates to be increased when cable operators experience increases in external costs including the costs associated with adding new cable programming services. That is precisely what the Commission has done in the development of the 20 cent markup formula. The Commission recognized that its original econometric studies did not reflect cost and rate increases experienced by cable systems subject to effective competition. Accordingly, the Commission performed a special study and based its new markup rule on what it characterized as the "historic

rate increase" associated with the addition of new services for systems subject to effective competition. Sixth Order at ¶ 68-69. We believe that the 20 cent markup is on the low side. However, it certainly cannot be claimed, as NATOA does, that the markup is without empirical foundation and therefore beyond the Commission's powers under the Cable Act.

NATOA's attack upon the legality of the NPT founders for similar reasons. As the Commission has recognized, the NPT is a cable programming service tier and, therefore, within the Commission's exclusive jurisdiction. The Commission has concluded that the structural safeguards and restrictions it has imposed upon the offering of this tier will permit the marketplace itself to discipline the rates that are charged for it. Sixth Order at ¶ 25. The Commission's conclusion that consumer demand itself will serve to regulate the prices charged for NPT plainly is correct. Subscriber response to rates charged for new tiers will depend on the charges for that tier. There is nothing in the Act or its legislative history which mandates that the Commission assign a specific numeric value to the maximum permitted rate. In the context of this newly-created type of tier, such a value, by definition, would be arbitrary because the category of service itself is without historic antecedents.

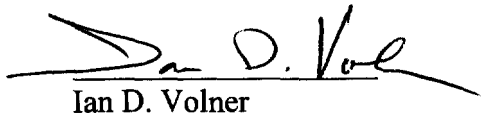
NATOA's alternative claim, that channels added pursuant to the new going-forward rules "should be counted as regulatable channels" (NATOA Petition at 11) for purposes of calculating benchmark and full reduction rates, would entirely undermine the purposes of the Sixth Order. In developing the new going-forward rules, the Commission has recognized that there are limits to the statistical studies that form the basis for the benchmark and full reduction rates and, no less importantly, that the so-

called efficiency curve that emerges from those studies is not infinitely extendible. The entire purpose of the proceeding that led to the Sixth Order was to fashion a new set of standards that overcome, or at the least appropriately account for, the limited utility of the statistical surveys upon which benchmark and full reduction rates are based. If services added under the revised going-forward rule were treated as "regulatable" for rate purposes, it would serve only to perpetuate the analytic infirmities that led the Commission to depart from the benchmark data in the first place. This would substantially diminish the incentives the new rules provide to cable operators to offer their subscribers increased programming choice either through additions to the cable programming service tier or through the creation of an NPT. Such results would be fundamentally at odds with the Commission's goal of more appropriately and effectively harmonizing the dictates of rate regulation with the primary objective of promoting and enhancing diversity through greater consumer choice.

For these reasons, NATOA's petition for reconsideration should be denied. Although not perfect, the new going-forward rules are explicitly designed to afford cable television subscribers enhanced opportunities to receive new and innovative

program services at reasonable prices. The rules are entirely lawful and further the most fundamental purposes of the 1992 Cable Act. They should be sustained.

Respectfully submitted,



Ian D. Volner
Venable, Baetjer, Howard
& Civiletti, L.L.P.
1201 New York Avenue, N.W., Suite 1000
Washington, DC 20005
202-962-4800

Counsel to USA Networks

Of Counsel:

Stephen A. Brenner
Executive Vice President, Business
Affairs, Operations and General Counsel
USA Networks
1230 Avenue of the Americas
New York, NY 10020-1513

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